

 <p style="text-align: center;">STATE OF ALASKA DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES</p> <p style="text-align: center;">Policy and Procedure</p>	POLICY AND PROCEDURE NUMBER 08.02.025	PAGE 1 of 20
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SUBJECT Employee Discipline	SUPERSEDES 22-3004 25-5000	DATED January 1, 1989 May 15, 1986
CHAPTER Personnel Administration	SECTION Personnel	APPROVED BY Signature on File

PURPOSE

This formalizes the policy and procedure (P&P) of the department on providing Department of Transportation and Public Facilities (DOT&PF), supervisors and managers with general guidelines when considering employee disciplinary action. There are many exceptions to the guidelines presented below. Each instance of disciplinary action must be considered individually. Disciplinary action **should not commence without first discussing it with the appropriate Division of Personnel's Management Services consultant.**

POLICY

Within DOT&PF, the purpose of employee discipline is to bring unacceptable behavior or performance to the attention of the employee so that the behavior or performance can be raised to acceptable standards. The most desirable result of disciplinary action is that work place problems are resolved, relationships between supervisors and employees remain productive, and the objectives of the work unit are achieved. Careful preparation before taking disciplinary action will reduce the possibility of a grievance and will also provide a solid foundation and defensible position should a disciplinary action be grieved and advanced to arbitration.

PROCEDURE

Progressive Discipline - Progressive discipline is a long-standing principle in labor relations. It requires appropriate forms and degrees of discipline be used for correcting performance problems. Progressive discipline is not primarily designed to be punitive, but rather affords the employee an opportunity to correct problem behavior or performance. In most cases, Progressive Discipline steps do not need to be followed "by the book." Clearly some behavior is so disruptive, universally understood to be wrong, and incompatible with employment as to require immediate removal of the employee from the work place.

Oral instructions and written letters of instruction that provide a clear explanation of what is expected of the employee are not considered discipline. Because letters of instruction are not considered disciplinary, they are not filed in the official personnel file; a copy should only be retained in the employee's supervisory file. A copy should also be forwarded to the Department of Administration, Division of Personnel and Labor Relations (DOP&LR) DOT&PF Management Services (DOT&PF MS) for consistency purposes.

Disciplinary action is generally inappropriate for probationary employees and nonpermanent employees. Performance difficulties typically experienced by probationary employees are addressed through training and should be documented in interim employee performance evaluations. Issues that would warrant discipline are reasons for nonretention of probationary employees and termination of nonpermanent employees.

Progressive discipline typically includes the following five steps of increasing severity and urgency. A sample letter or memorandum for each step (except for demotion) is provided at the end of the P&P. For assistance with a demotion letter or memorandum, contact your DOT&PF MS consultant.

Guidelines for the retention of supervisory files, memos, letters and disciplinary actions described in this P&P can be found at the DOP&LR HR service center website at: <http://web.dot.state.ak.us/HR/assets/Supervisory-File-Guidelines.pdf>

State of Alaska employees covered under collective bargaining agreements are entitled to have union representation (usually a union business agent or steward) at meetings and hearings which may result in disciplinary action.

A. Warning

A warning may be oral or written. The employee must be clearly informed that specific behavior or performance is not acceptable, what the acceptable levels are, how the employee can modify behavior to reach acceptable levels, and the consequences of not achieving an acceptable level.

If the warning is oral, the supervisor should record the content as well as the date, time and place on which the warning was delivered in the employee's supervisory file.

A copy of a written warning should be retained in the employee's supervisory file with copies forwarded to the DOT&PF MS for filing in the employee's official personnel file and to the appropriate union (may be sent by fax). A copy should also be forwarded to the DOT&PF MS for consistency purposes. **A sample warning memo is included with this P&P.**

B. Reprimand

A reprimand is issued in writing and has the same content requirements as a warning. Because it is a more severe form of discipline than a warning, most reprimands are issued as formal letters or memoranda. **A sample reprimand memo is included with this P&P.**

A copy of a written reprimand should be retained in the employee's supervisory file with copies forwarded to the DOT&PF MS for filing in the employee's official personnel file and to the appropriate union (may be sent by fax). A copy should also be forwarded to the DOT&PF MS for consistency purposes.

C. Suspension

A suspension for cause is the denial of work and pay (including certain benefits) for a specified period of time. It is implemented through a formal letter to the employee advising that he or she will be denied work and pay for a specified period of time because of unacceptable behavior or performance.

As in a warning or reprimand, the letter should state what behavior or performance is unacceptable, what must be done to correct that behavior or performance, and the consequences of not correcting the behavior. **A sample suspension/final warning letter is included with this P&P.**

In addition to withholding pay from the employee, a disciplinary suspension reduces the employee's leave accrual for the month(s) of suspension, and may affect other important matters such as eligibility for holiday pay and health insurance (if the suspension crosses the first day of the month), and merit anniversary date.

Always check with your DOT&PF MS consultant before issuing a suspension to make sure that you are in compliance with applicable laws and regulations.

A copy of a suspension letter/memorandum should be retained in the employee's supervisory file with copies forwarded to the DOT&PF MS for filing in the employee's official personnel file and to the appropriate union (may be sent by fax). A copy of all suspension letters/memorandum should also be forwarded to the DOT&PF MS for consistency purposes.

D. Demotion

Demotion for cause is the reassignment of an employee's duties and responsibilities to those of a lower level classification and therefore to a lower level of pay.

It is implemented through a formal letter or memorandum to the employee identifying the behavior or performance which provides the basis for the demotion, an explanation of why demotion is appropriate in this case, and the consequences of failure to perform or behave in an acceptable manner in the new assignment. **For assistance with a demotion letter or memorandum, contact your DOT&PF MS consultant.**

Demotion for cause letters and memoranda must be sent or faxed to the appropriate union with a copy placed in the employee's supervisory file. The supervisor should also forward the letter/memorandum to DOT&PF MS who will file in the employee's official personnel file.

E. Discharge

A discharge for cause is implemented through a formal letter or memorandum to the employee advising that his or her employment is terminated because of unacceptable performance or behavior. **A sample dismissal letter is included with this P&P.**

The discharge letter should identify the behavior or performance which is the basis for the action and the reasons why it warrants discharge.

1. If progressive discipline has failed to correct the problem, or if one incident is sufficiently egregious, discharge may be justified. Examples of conduct which may be cause for immediate discharge include but not limited to: gross disobedience, dishonesty, intoxication, substance abuse, physical misconduct, abusive or lewd behavior, or abandonment of duties. It is important to keep in mind that the burden of proof on the state in arbitration is much greater in a discharge case than in other types of disciplinary cases.
2. Because of the serious implications of discharge, the final decision on whether or not an employee is to be discharged is usually reserved for the division or system director or designee. The primary responsibility left to lower levels of management in discharge cases is to assure accurate documentation of performance problems, and all steps taken to afford the employee an opportunity to succeed. Supervisors who feel they have grounds to discharge an employee must confer with the appropriate DOT&PF MS consultant and secure necessary approvals from the division or system director or designee prior to taking final action.
3. A copy of a discharge letter/memorandum must be forwarded to the DOT&PF MS for filing in the employee's official personnel file and to the appropriate union as required by collective bargaining agreements (may be sent by fax).

Just Cause -

- A. All discipline issued against employees is ultimately analyzed according to whether management had just cause to discipline or discharge the employee. The term “just cause” is used in the state’s collective bargaining agreements with its unions. Generally, the contracts will state that employees will only be disciplined or discharged for just cause. Even among non-union or unrepresented employees, the courts will sometimes consider whether there was just cause to discharge an employee.
- B. There are many definitions of “just cause” in use today. The Alaska courts have defined just cause in cases involving non-union employees outside of the collective bargaining context and union represented employees in the collective bargaining area. The State of Alaska as an employer has adopted the definition set forth in *Braun v. AK. Commercial Fishing & Ag. Bank*, 816 P 2d 140 (1991) a discharge case decided by the Alaska Supreme Court. In *Braun v. CFAB* the Alaska Supreme Court considered the case of a non-union bank officer who was discharged allegedly for economic reasons. The employee claimed that the bank breached its contract with the employee. The Court stated that a discharge for just cause “is one which is not for any arbitrary, capricious, or illegal reason and which is based on facts (1) supported by substantial evidence and (2) reasonably believed by the employer to be true.” The Court found that the bank was motivated by economic reasons to discharge the employee and that this met the standard of just cause.
- C. The definition of “just cause” set forth in *Braun v. CFAB* should be used to evaluate whether or not any disciplinary action (from warning through discharge) is appropriate and defensible. Before proceeding with disciplinary action, the following three questions should be satisfactorily answered in the affirmative:
1. Is the action being taken not for arbitrary, capricious, or illegal reasons?
 2. Is the decision to take this action based on facts supported by substantial evidence?
 3. Is the decision to take this action based on facts the employer reasonably believes to be true?

Due Process - Most employees have a right to due process when they are subject to disciplinary action. Otherwise, a reasonable disciplinary action may be overturned because of a violation of the employee’s right to fair and just treatment from the employer.

When facing potential discipline, employees have the right to representation and notice of allegation. In Alaska, these rights are conferred by a combination of statutes and case law.

This combination includes the Public Employment Relations Act (PERA), Alaska Labor Relations Agency (ALRA) Decision and Order 206 and *National Labor Relations Board (NLRB) v. J. Weingarten, Inc.*, 420 U.S. 251 (1975).

The U.S. Supreme Court, in *NLRB v. J. Weingarten, Inc.* established that employees have the right to union representation in circumstances where the employee reasonably fears that the interview may result in discipline.

In Alaska, public employees' rights to tell their side of the story and their property interests in employment are conferred by a combination of case law including: *Storrs v. Municipality of Anchorage*, 721 P.2d 1146, 1150 (Alaska 1986) and *Cleveland Board of Education v. Loudermill*, 470 U.S. 532 (1985).

The U.S. Supreme Court recognized the significance of the private interest in retaining employment, holding that where a legislature has conveyed a property interest in public employment, "it may not constitutionally authorize the deprivation of such an interest, once conferred, without appropriate procedural safeguards."

The right to be heard requires we provide the employee the opportunity to give their side of the story and to present any mitigating factors before the employer takes action against employment.

The following requirements of due process must be observed with each step of progressive discipline:

- A. Prior to discipline, the employee must be informed about the charges or allegations of problem behavior. This must be in writing and should be included in the notification letter informing the employee of the investigative meeting.
- B. State of Alaska employees covered under a collective bargaining agreement must be afforded the right to representation. Whenever a supervisor meets with an employee to discuss matters which may involve discipline, the employee has the right to have a union representative present. The *Weingarten* doctrine states in part that employees are entitled to due process, through adequate representation, at interviews that could lead to discipline.
- C. The accused employee's side of the story must be heard before arriving at any decision about discipline. Any mitigating circumstances should be considered.

- D. The investigation must persuasively establish that the employee has misbehaved or performed poorly as alleged. All available documents and information from witnesses should be included in the investigation.
- E. If information comes to light during the course of an investigation that indicates criminal activity may have occurred, the investigation should be stopped immediately and the department DOT&PF MS consultant contacted.
- F. The past record of the employee must be reviewed to determine whether the employee's action was an isolated event or part of a related series of misbehavior.
- G. If disciplinary action results from the investigation, in most cases the union must be notified concurrently with notice to the employee and a copy of any written disciplinary action must be placed in the employee's personnel file maintained by the DOP&LR. Drafts of written discipline should be reviewed by the DOT&PF MS consultant prior to being issued.
- H. In all cases, notice of disciplinary action to the employee should be made available to the union. The allegations, findings, conclusions, and recommendations may be reduced to writing in an investigation report. However, this is a confidential report and should not normally be made available to the union. Any documentation should be sent to the DOT&PF MS.

Conducting the Pre-determination Meeting - Prior to taking disciplinary action, a supervisor must ascertain all the facts involved. The investigation should include a pre-determination meeting with the employee. **A sample investigatory interview memo is included with this P&P.**

- A. Discuss the matter with a DOT&PF MS consultant prior to taking disciplinary action.
- B. Advise the employee in writing of the allegations and the time and place of the meeting.
- C. Give the employee reasonable time to prepare after checking the applicable Collective Bargaining Agreement for any time requirements.
- D. Tell the employee discipline may result and the potential severity of the discipline and the employee may exercise the right to have a union representative present.
- E. Think about who should be at the meeting. Keep the numbers relatively even. Generally, it should be a supervisor, human resources representative, and union representative (if the employee arranges union representation).

- F. Give the employee a full opportunity to refute the allegations and to tell his or her side of the story. Note: This meeting is not a full evidentiary hearing. It is the employee's opportunity to hear the charges against them and provide feedback to the decision maker.
- G. Listen carefully to what the employee has to say. Ask questions to clarify any information or comments you don't understand.
- H. Ask the employee if there is anything else you should know about the situation that you have not covered in the interview. What other people should you talk to who may have relevant information? Give the employee a way to provide additional information after the interview, directly or through the union representative.
- I. Tell the employee when you expect to get back to them with your decision.
- J. Give yourself time to make a fair and objective decision after you have evaluated all the evidence.
- K. Consider all mitigating circumstances.
- L. Keep a written record of your investigation meeting to provide to the DOT&PF MS, if requested, but do not release such records to the employee or the union.

Preparing a Written Warning, Reprimand, Suspension/Final Warning or Dismissal Letter/Memorandum -

- A. State that the letter or memorandum constitutes a written warning, reprimand, suspension or dismissal.
- B. Reference all investigatory or pre-discipline meetings or hearings held prior to the decision to discipline and indicate if union representation was present at the meeting.
- C. Include a statement of the request, order, rule, regulation, conduct, or procedure which has been violated.
- D. Give specific facts including date, time, place, and actions of the individual involved. Be exact and to the point. Avoid making statements of assumption or using hearsay. Indicate if any mitigating circumstances were considered when determining the level of discipline. Indicate any other considerations such as the employee's previous written acknowledgement of the policies that were violated.

- E. Outline all previous warnings or oral/written reprimands given. State your intent to place a copy in the employee's personnel file.
- F. Indicate that the employee is being given a chance to correct the situation. Also state that if the behavior or performance does not improve, further disciplinary action will be taken. Be sure to state clearly what specific improvement is expected.
- G. Forward copies of the letter/memorandum to DOT&PF MS for inclusion in the employee's personnel file for consistency purposes, and to the appropriate union.

AUTHORITY

AS 39.25.150(15)

2 AAC 07.400

2 AAC 07.415 – 2 AAC 07.420

General Government Unit (**GGU**), Supervisory Unit (**SU**), Confidential Unit (**KK**), Labor Trades and Crafts Unit (**LTC**), PSEA and Marine collective bargaining agreements

IMPLEMENTATION RESPONSIBILITY

Deputy commissioners; regional and division directors; system directors and managers; and supervisors

DISTRIBUTION

All department employees via the DOT&PF website

You are reminded of your rights outlined in the Bargaining Agreement with the State of Alaska and the (SU, GGU, LTC, PSEA, Marine as appropriate) Union.

cc: Personnel File
Division or System Director
DOT&PF Management Services
Appropriate Bargaining Unit (by fax)

NOTE: Warnings will be in memorandum format.

You are cautioned that continued failure to follow department policy and procedure will not be tolerated. Any future occurrences of same or like nature will be cause for further disciplinary action up to and including termination. You are reminded of your rights outlined in the Bargaining Agreement with the State of Alaska and the (SU, GGU, LTC, PSEA, Marine as appropriate) Union.

cc: Personnel File
Division or System Director
DOT&PF Management Services
Appropriate Bargaining Unit (by fax)

NOTE: Reprimands will be in memorandum format.

Sample 4

Sample Suspension/Final Warning Letter

Department of Transportation and Public Facilities (Letterhead)

Division of (name)

(Date)

Certified Mail # xxxxxxxx

(Employee, Address, City, State, Zip)

(Employee Name):

(History)(Date)(Incident)

On (date), a pre-determination meeting was conducted with you, (list attendees), and myself to address performance concerns and to allow you an opportunity to respond to the allegation that you violated Department of Transportation and Public Facilities (DOT&PF) policy (state appropriate policy e.g., DOT&PF policy and procedure 02.01.020, depending on the type of infraction) by failing to report to work and not calling in. The department has concluded its investigation and determined that disciplinary action is warranted.

(Employee response and management conclusion about responses).

During the meeting, you explained you understand the policy and procedures and decided not to follow them because "it wasn't that big a deal." Your testimony and explanation that the policy is "irrelevant and nit-picky" is dismaying to your employer and demonstrates a continued disregard for department policy and procedures.

The Department's investigation supports the following conclusions:

- You failed to report to work on (Date) and did not call in to report or request the absence.
- To support your claim that your absence was due to illness, you were unable to provide a health care provider's certification that the absence was medically necessary. When you did not show up for work on (Date), I phoned you at your residence. You explained that your doctor had changed the medication you were taking and the medication was not agreeing with you. I requested that you immediately get an appointment with the physician and furnish me with a letter that confirmed that your absence was medically necessary. If your physician prescribed a medical leave of absence to address your condition, I would support that prescription and you would be granted necessary time off.

(Review of employee's work record)

You previously received both a written warning and a reprimand that reinforced a letter of instruction identifying frequent absenteeism and irregular work hours. You were directed to immediately curtail your excessive use of unscheduled leave, and instructed that no leave would be approved without specific approval. You were also instructed to report any unscheduled absences within 15 minutes of the start of your workday. You were warned that further disciplinary actions would result if you were unable to make this correction.

(Incident/Issue and Rule)

Your unscheduled leave usage continues to adversely affect the performance of the program and not only has a negative impact on staff and attainment of program goals, but reflects badly on the division as a whole and our ability to fulfill our mission. In order to provide effective leadership, management and supervision, you must immediately curtail the excessive use of unscheduled leave. No leave will be approved without specific prior approval from me or my designee. After carefully reviewing all of the information surrounding this matter, the Department finds that the appropriate disciplinary action is a five-day (37.5-hour) suspension without pay.

(Disciplinary Action Taken)

The suspension is effective (Date) through (Date). You should report for work on (Date) at your normally scheduled time. During the term of your suspension, you are not to return to (work site) or go to any DOT&PF office or facility. In addition, you are not to represent yourself in any official capacity during this period.

Should there be a repeat of this behavior or should you retaliate against any employee because of their participation in this investigation, you will be subject to additional discipline up to and including dismissal.

I believe you understand the seriousness of this matter and how you are to adjust your behavior in order to avoid this problem in the future. I am confident that you can address this matter in a positive and professional manner and that this issue will not arise in the future.

You are reminded of your rights outlined in the Bargaining Agreement with the State of Alaska and the (SU, GGU, LTC, PSEA, Marine as appropriate) Union.

Sincerely,

Name
Division Director

cc: Personnel File
Division or System Director
DOT&PF Management Services
DOT&PF Payroll
Appropriate Bargaining Unit (by fax)

NOTE: Suspensions will be in Letter format.

Sample 5

Sample Dismissal Letter

Department of Transportation and Public Facilities (Letterhead)

Division of (name)

(Date)

Certified Mail # xxxxxxxx

(Employee, Address, City, State, Zip)

(Employee Name):

(History)(Date)(Incident)

On (date), a pre-determination meeting was conducted with you, (list attendees), and myself to address performance concerns and to allow you an opportunity to respond to the allegation that you violated Department of Transportation and Public Facilities (DOT&PF) policy (state appropriate policy e.g., DOT&PF policy and procedure 02.01.020, depending on the type of infraction) by failing to report to work and follow call-in procedures. After careful review and consideration the decision has been made to terminate your employment as a(n) (Job title) effective (Date).

(Employee response and management conclusion about responses).

During this meeting, you explained you understand the policy and procedures and do not agree with them. You then stated, "I don't have to follow a policy I don't agree with." This testimony and explanation demonstrates a continued disregard for department policy and procedures and a clear refusal to follow policy.

The Department's investigation supports the following conclusions:

- You previously received both a written warning and a reprimand that reinforced a letter of instruction identifying frequent absenteeism and irregular work hours. You were directed to immediately curtail your excessive use of unscheduled leave, and instructed that no leave would be approved without specific approval. You were also instructed to report any unscheduled absences within 15 minutes of the start of your workday. You were warned that further disciplinary actions would result if you were unable to make this correction.
- The behavior continued and you were suspended without pay for one week.
- You failed to report to work on (Date) and did not call in to report or request the absence. When questioned, you indicated that you did report to work at 8:00 AM, however it was determined that you did not arrive until 10:00 AM.

- You failed to report to work on (Date) and did not call in to report or request the absence. You reported to work later that day at 2:00 PM.

(Review of employee's work record)

I have reviewed your work history. You have been verbally counseled, received numerous instructions and recently received severe discipline regarding your failure to follow department policy and procedure (state appropriate policy). You were strongly cautioned of your need to immediately improve.

(Disciplinary Action Taken)

These facts, your continued refusal and failure to follow policy and procedure, along with your testimony were taken into consideration while making a final determination. Due to your continued failure to report to work on time or provide notice as instructed, you leave me with no alternative but to immediately dismiss you from your position.

Enclosed, you will find a list of optional (SU, GGU, LTC, PSEA, Marine as appropriate) separation forms, with the Division of Personnel forms website shown on the bottom. Please go to this website and review these forms to see which ones may apply to you. If you have any questions about these forms, please contact (appropriate payroll supervisor) at (phone number). Your attention is specifically directed to the entitlement you may have under federal COBRA law to continue your health insurance coverage with self-payment of the monthly premiums. However, there is a defined timeframe to elect continuing health coverage. You must contact the (appropriate union) Health Trust for more specific information. Please mail whatever forms are applicable to the DOT&PF Payroll Office in the Division of Personnel and Labor Relations (DOP&LR) at (address) or you may hand deliver them to (physical address).

In addition, in a few days you will receive information regarding your eligibility for future rehire by the State of Alaska directly from the DOP&LR.

You are directed to return all state issued property that has been provided to you.

You are reminded of your rights outlined in the Bargaining Agreement with the State of Alaska and the (SU, GGU, LTC, PSEA, Marine as appropriate) Union.

Sincerely,

Name
Division Director

cc: Personnel File
Division or System Director

DOT&PF Management Services
DOT&PF Payroll
Appropriate Bargaining Unit

NOTE: Dismissals will be in letter format.